United Nations ST/IC/2011/20

Secretariat

27 July 2011

Information circular*

To: Members of the staff

From: The Under-Secretary-General for Management

Subject: **Practice of the Secretary-General in disciplinary matters and possible criminal behaviour, 1 July 2010 to 30 June 2011**

1. The purpose of the present circular[1] is to continue to inform staff members of the practice of the Secretary-General in exercising his authority in disciplinary matters under article X of the United Nations Staff Regulations, and to implement paragraph 17 of resolution 59/287, in which the General Assembly requested the Secretary-General to ensure that all staff of the Organization are informed of the most common examples of misconduct and/or criminal behaviour and their disciplinary consequences, including any legal action, with due regard for the protection of the privacy of the staff member(s) concerned. This circular covers the period from 1 July 2010 to 30 June 2011.

2. A broad overview of the administrative machinery in disciplinary matters is provided in section I below so that the information provided in section II can be understood in context. Section II contains a summary of the cases for which one or more disciplinary measures were imposed by the Secretary-General during the reporting period. Section III provides information on the practice of the Secretary-General in cases of possible criminal behaviour.

* The present circular is in effect until further notice.

[1] Previous circulars covering the period from January 2000 to June 2010 were issued as ST/IC/2002/25, ST/IC/2004/28, ST/IC/2005/51, ST/IC/2006/48, ST/IC/2007/47, ST/IC/2008/41, ST/IC/2009/30 and ST/IC/2010/26.

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I. Overview of administrative machinery in disciplinary matters in the new system of administration of justice

A. Legislative framework governing the conduct of staff members[2]

3. Article 101, paragraph 3, of the Charter of the United Nations states that the "paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity".

4. Article I of the Staff Regulations and chapter I of the Staff Rules, both entitled "Duties, obligations and privileges", set out the basic values expected of international civil servants because of their status, as well as particular manifestations of such basic values. Particular reference is made to staff regulation 1.2 and staff rule 1.2 for specific instances of expected or prohibited conduct.

B. Misconduct

5. Article X of the Staff Regulations provides in regulation 10.1 (a) that "the Secretary-General may impose disciplinary measures on staff members who engage in misconduct". Staff rule 10.1 (a) provides that the "failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances or to observe the standards of conduct expected of an international civil servant may amount to misconduct and may lead to the institution of a disciplinary process and the imposition of disciplinary measures for misconduct". Additionally, staff rule 10.1 (c) provides that "the decision to launch an investigation into allegations of misconduct, to institute a disciplinary process and to impose a disciplinary measure shall be within the discretionary authority of the Secretary-General or officials with delegated authority". Within these parameters, the Secretary-General has broad discretion in determining what constitutes misconduct and in imposing disciplinary measures. Administrative instruction ST/AI/371/Amend.1, on revised disciplinary measures and procedures,[3] provides further examples of conduct for which disciplinary measures may be imposed.

C. Due process

6. Where the head of office or responsible officer believes, following an investigation, that misconduct may have occurred, he or she refers the matter to the Assistant Secretary-General for Human Resources Management for a decision on whether to pursue the matter as a disciplinary case.[4] Depending on the subject matter and complexity of an investigation, it can be undertaken by the head of office

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[2] Provisions relating to the status, rights and obligations of staff members, and to disciplinary matters, can be found in the electronic Human Resources Handbook under the headings "Status, basic rights and duties" and "Disciplinary".

[3] See ST/SGB/2008/5.

[4] The head of administration in a mission will refer the case to the Department of Field Support at Headquarters, which will refer the matter to the Office of Human Resources Management if it concurs with the mission's assessment.

or his or her designees, or by the Office of Internal Oversight Services, at its own initiative or at the request of a head of office.

7. If the Assistant Secretary-General for Human Resources Management decides to pursue the matter as a disciplinary case, the staff member is notified in writing of the allegations of misconduct and is informed of his or her opportunity to comment on the allegations and of his or her right to seek the assistance of counsel in his or her defence through the Office of Staff Legal Assistance or from outside counsel at his or her own expense. The staff member is given a reasonable opportunity to respond to the allegations of misconduct. In the light of the comments provided by the staff member, the Assistant Secretary-General for Human Resources Management decides whether to close the case, with or without administrative action, or to recommend the imposition of one or more disciplinary measures. In the latter case, the Under-Secretary-General for Management decides, on behalf of the Secretary-General, whether to impose one or more of the disciplinary measures provided for in staff rule 10.2 (a).

8. At any time pending an investigation until the completion of the disciplinary process, the Assistant Secretary-General for Human Resources Management may decide to place a staff member on administrative leave with pay where there is prima facie evidence that the conduct of the staff member poses a danger to other United Nations personnel or to the Organization; the staff member is unable to continue to perform his or her functions effectively because of an ongoing investigation and the nature of the functions; there is prima facie evidence that continued service by the staff member would create an unacceptable risk that he or she could interfere with the investigation; or the Department of Safety and Security determines that the continued presence of the staff member on United Nations premises could constitute a security risk to the Organization. Decisions of placement on administrative leave without pay are taken by the Under-Secretary-General for Management.

9. In accordance with staff rule 10.3 (c), a staff member against whom a disciplinary measure has been imposed may submit an application to the United Nations Dispute Tribunal challenging the imposition of the measure(s), in accordance with chapter XI of the Staff Rules.[5]

D. Disciplinary measures

10. Staff rule 10.2 (a) provides that disciplinary measures can take one or more of the following forms (i.e., more than one measure can be imposed in each case):

(a) Written censure;

(b) Loss of one or more steps in grade;

(c) Deferment, for a specified period, of eligibility for salary increment;

(d) Suspension without pay for a specified period;

(e) Fine;

[5] Judgements of the United Nations Dispute Tribunal relating to disciplinary cases can be found on the website of the Office of the Administration of Justice (www.un.org/en/oaj).

(f) Deferment, for a specified period, of eligibility for consideration for promotion;

(g) Demotion, with deferment, for a specified period, of eligibility for consideration for promotion;

(h) Separation from service, with notice or compensation in lieu of notice, and with or without termination indemnity;

(i) Dismissal.

11. In determining the appropriate measure, each case is decided on its own merits, taking into account the particulars of the case, including aggravating and mitigating circumstances. In accordance with staff rule 10.3 (b), disciplinary measures imposed shall be proportionate to the nature and gravity of the misconduct involved.

E. Other measures

12. Written or oral reprimands, recovery of moneys owed to the Organization and administrative leave with or without pay are not considered disciplinary measures. Reprimands, like warnings or letters of caution, are administrative/managerial measures that are important for upholding standards of proper conduct and promoting accountability. Additionally, where inappropriate behaviour affects performance, the issue is addressed in the context of performance management. This may include training, counselling, withholding of salary increments, non-renewal of contract or termination of appointment.

II. Summary of cases for which the Secretary-General imposed disciplinary measures during the period from 1 July 2010 to 30 June 2011

13. For each case that led to the imposition of one or more disciplinary measures, a summary is provided below indicating the nature of the misconduct and the disciplinary measure(s) imposed by the Secretary-General. The function of or other particulars relating to the staff member are provided only when they played a role as aggravating or mitigating circumstances in determining the measures to be taken. Conduct issues that were dealt with by means other than disciplinary measures are not listed.

14. Not every case brought to the attention of the Secretary-General results in disciplinary or other measures being taken. When a review by the Office of Human Resources Management reveals that there is insufficient evidence to pursue a matter as a disciplinary case or when a staff member provides a satisfactory explanation in response to charges of misconduct, the case is closed and the staff member is considered cleared of the charges. Cases may also be closed when a staff member retires or is otherwise separated from the Organization before disciplinary proceedings are concluded, as the Secretary-General does not have the authority to impose disciplinary measures on former staff members. In such cases, a record is made and placed in the former staff member's official status file so that the matter can be further considered if and when the staff member rejoins the Organization.

A. Abuse of authority/harassment/discrimination

15. A staff member placed himself in a situation with the clear potential for a conflict of interest in relation to a recruitment process, which affected the process.

Disposition: Censure and a fine of one month's net base salary.

16. A staff member engaged in two incidents of "name-calling" of colleagues.

Disposition: censure.

17. A staff member, over the course of several months, sexually harassed a female independent contractor under his supervision.

Disposition: separation from service with compensation in lieu of notice and with termination indemnity.

B. Assault (verbal and physical)

18. A staff member physically assaulted another staff member after a verbal altercation by hitting her in the face and shoulders with a closed fist, and then subsequently, after he was restrained, attempted to assault her a second time.

Disposition: dismissal.

19. A staff member verbally abused another staff member, engaged in aggressive and uncooperative behaviour towards him, and physically assaulted a female non-staff member.

Disposition: separation from service with compensation in lieu of notice and termination indemnity.

20. A staff member physically assaulted his wife, who was also a staff member, on two occasions, by slapping her in the face and hitting her in the head with a bottle.

Disposition: separation from service with compensation in lieu of notice, but without termination indemnity.

21. A staff member admitted to physically assaulting his wife.

Disposition: dismissal.

22. After a verbal altercation, a staff member, while attempting to retrieve car keys, physically assaulted another staff member by pushing her and causing her to fall to the floor.

Disposition: demotion in grade, with deferment for one year of eligibility for consideration for promotion, and censure.

23. A staff member, while operating a United Nations vehicle without reasonable care and without authorization and for non-official purposes, struck and killed instantly two pedestrians.

Disposition: dismissal.

24. During the course of an argument, a staff member failed to follow the instructions of a Security Guard, verbally threatened the Security Guard, and physically assaulted another staff member by spitting in his face.

Disposition: censure, deferment of one year in eligibility for within-grade increment, and one week suspension without pay.

25. A staff member verbally abused, and made a physically threatening movement with respect to, another staff member.

Disposition: censure and loss of five steps in grade.

26. A staff member threatened to physically harm a Security Officer and subsequently physically assaulted him.

Disposition: censure, loss of step in grade and deferment for one year of eligibility for within-grade increment.

27. A staff member, while inebriated, assaulted a Security Guard.

Disposition: censure.

C. Computer-related misconduct

28. Three staff members received and distributed pornographic materials, including child pornography, using their official Lotus Notes e-mail accounts.

Disposition: dismissal.

29. Two staff members received and distributed a relatively small number of e-mails containing pornography using their official Lotus Notes e-mail accounts.

Disposition: censure.

30. Thirty-two staff members received and distributed a relatively small number of e-mails containing pornography using their official Lotus Notes e-mail accounts.

Disposition: censure.

31. Eight staff members received e-mails, distributed and stored a relatively large number of e-mails containing pornography using their official Lotus Notes e-mail accounts.

Disposition: censure, loss of two steps within grade and two years deferral of consideration for promotion.

32. Staff member received, failed to report and stored at least 246 e-mails in 8 user-created folders containing pornography and other inappropriate images.

Disposition: separation from service with compensation in lieu of notice and without termination indemnity.

33. A staff member knowingly and wilfully accessed the electronic mailbox of another staff member, without authorization.

Disposition: demotion of one grade, with deferment, for three years, of eligibility for consideration for promotion, and censure.

D. Financial disclosure

34. A staff member failed to comply with his financial disclosure obligations. The staff member had previously been found to have failed to comply with his financial disclosure obligations relating to an earlier reporting period.

Disposition: censure, a fine of three months' net base salary, and deferment, for three years, of eligibility for consideration for promotion.

35. Four staff members failed to comply with their financial disclosure obligations.

Disposition: censure and a fine of two months' net base salary.

36. Seven staff members failed to comply with their financial disclosure obligations.

Disposition: censure.

E. Fraud/misrepresentation

37. A staff member forged a stamp in a copy of his United Nations laissez-passer, which the staff member submitted to the Personnel Section of a mission as an official record of his leave date, and provided false information in his annual leave report.

Disposition: separation from service with compensation in lieu of notice and with termination indemnity.

38. A staff member submitted to the Organization, in connection with his recruitment, a secondary school report card containing altered grades.

Disposition: demotion of one grade with deferment, for three years, of eligibility for consideration for promotion.

39. A staff member cheated on a written test administered by the Organization by submitting the model answers prepared by others for the test.

Disposition: demotion by one grade with deferment, for a period of three years, of eligibility for consideration for promotion.

40. A staff member made material omissions in his Personal History Profile in relation to his employment history with the United Nations and accepted duties in a post at the G-4 level, for which he was ineligible.

Disposition: Demotion of one grade.

41. A staff member made material misrepresentation on several Personal History Profile forms in relation to his educational qualifications and submitted a false diploma.

Disposition: separation from service, with compensation in lieu of notice, but without termination indemnity.

42. A staff member used a falsified payslip in connection with a loan application and misrepresented his educational qualifications in his Personal History Profile.

Disposition: dismissal.

43. A staff member used her United Nations-issued PIN number to make private calls and recorded them as business calls for a period of over a year.

Disposition: censure, and deferment of one year of eligibility for consideration for promotion.

44. A staff member altered and falsified an official document and left the mission area without prior authorization.

Disposition: censure.

45. A staff member used United Nations equipment and knowledge gained from his official function as a Security Guard to produce at least two false United Nations identification cards and provided same to a non-United Nations staff member, in exchange for monetary compensation.

Disposition: dismissal.

46. A staff member improperly and without authorization accessed another staff member's computer and Internet banking account and performed a wire transfer from the staff member's bank account to a third party in the sum of US$ 5,000.

Disposition: dismissal.

47. A staff member altered an official document, namely a request for equipment, without authorization so as to increase the quantities of items requested.

Disposition: demotion of one grade with deferment, for two years, of eligibility for consideration for promotion and censure.

48. A staff member misrepresented his academic qualifications on his Personal History Profile.

Disposition: separation with compensation in lieu of notice and termination indemnity.

49. A staff member made material misrepresentations in relation to her educational qualification on her Personal History Profile, falsely certifying the accuracy of its contents, and submitting falsified diplomas.

Disposition: separation from service with compensation in lieu of notice and termination indemnity.

50. A staff member made material misrepresentations on her Personal History Profile in relation to her educational qualifications.

Disposition: separation from service with compensation in lieu of notice and with termination indemnity.

51. A staff member made material misrepresentations on her Personal History Profile in relation to whether she had relatives employed by the Organization.

Sanction: separation with compensation in lieu of notice, but without termination indemnity.

52. A staff member made material misrepresentations on her Personal History Profile in relation to whether she had relatives employed by the Organization and refused to cooperate with an investigation.

Sanction: dismissal.

F. Sexual exploitation and sexual abuse

53. A staff member engaged in sexual abuse and exploitation by paying prostitutes for sexual services.

Disposition: dismissal.

54. A staff member engaged in sexual activity with a female who was, at the time, under the age of 18, and in several sexual relationships with beneficiaries of United Nations assistance, in violation of ST/SGB/2003/13. The staff member also engaged in the unofficial and unauthorized use of United Nations vehicles.

Disposition: dismissal.

G. Theft/misappropriation

55. A staff member stole rolls of barbed wire belonging to the Organization. The staff member was also identified as part of a group of individuals involved in stealing and re-selling United Nations property.

Disposition: dismissal.

56. A staff member misappropriated at least two gallons of diesel fuel belonging to the Organization; knowingly failed to ensure the safety and security of United Nations property assigned to him and to exercise reasonable care in relation to that property; and deliberately failed to report the incidents of damage to a United Nations vehicle and misappropriation of United Nations fuel.

Disposition: separation from service with compensation in lieu of notice, and without termination indemnity.

57. A staff member stole property belonging to the United Nations, namely, laboratory equipment.

Disposition: dismissal.

58. A staff member stole and sold diesel fuel belonging to the Organization.

Disposition: separation from service with compensation in lieu of notice and with termination indemnity.

59. A staff member took another staff member's bank card, without authorization, and used it to make two withdrawals, also without authorization.

Disposition: separation from service with compensation in lieu of notice, and without termination indemnity.

60. A staff member siphoned and sold 600 litres of diesel fuel belonging to the Organization.

Disposition: separation from service with compensation in lieu of notice and without termination indemnity.

H. Outside activities

61. A staff member worked as a consultant for a private company for three years while employed with the United Nations, without the authorization of the Secretary-General.

Disposition: censure and a fine of one month net base salary.

62. A staff member co-founded a company for the purpose of providing certain services for remuneration.

Disposition: censure, loss of step in grade, and deferment for one year of eligibility for within grade increment.

63. A staff member engaged in private legal occupation without the approval of the Secretary-General.

Disposition: censure and a loss of step in grade.

I. Violation of local laws

64. A staff member violated local law by possessing a controlled substance.

Disposition: separation from service with compensation in lieu of notice and termination indemnity.

65. A staff member violated local law by illegally possessing an illegal substance.

Disposition: censure.

66. A staff member failed to report to the Secretary-General the fact that he had been arrested, charged and summoned before a court in a criminal proceeding.

Disposition: censure.

67. A staff member engaged in the trafficking of illegal narcotics in violation of local law.

Disposition: separation from service without termination indemnity.

J. Other

68. A staff member attempted to by-pass the official airport security screening process in order to transport, without authorization, commercial goods on behalf of non-United Nations personnel on a United Nations aircraft.

Disposition: separation from service with compensation in lieu of notice and without termination indemnity.

69. A staff member arranged a contract for a third party to discharge existing claims by the third party against the Organization.

Disposition: written censure.

70. A staff member failed to honour her private legal obligations with respect to the payment of rental arrears and associated legal costs.

Disposition: demotion of one grade with deferment, for two years, of eligibility for consideration for promotion and censure.

71. A staff member repeatedly failed to comply with the instructions issued by the Secretary-General regarding settlement of private legal obligations.

Disposition: demotion of one grade with deferment, for three years, of eligibility for consideration for promotion.

III. Possible criminal behaviour

72. The General Assembly, in its resolution 59/287, requested the Secretary-General to ensure that action is taken expeditiously in cases of proven misconduct and/or criminal behaviour and to ensure that Member States are informed of the actions taken. During the reporting period, eight cases involving credible allegations of criminal conduct by United Nations officials or experts on mission were referred to Member States. The Secretary-General is not aware of any action taken in respect of such cases by the Member States concerned.